

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA,  
OFFICE OF ATTORNEY GENERAL  
BY THOMAS W. CORBETT, JR., ATTORNEY GENERAL  
Petitioner**

**v.**

**NO.**

**M.D. 2006**

**LOWER OXFORD TOWNSHIP,  
LOWER OXFORD TOWNSHIP BOARD  
OF SUPERVISORS  
Respondents**

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**PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR  
DECLARATORY JUDGEMENT AND INJUNCTIVE RELIEF**

The Commonwealth of Pennsylvania, by the Attorney General, brings this Petition for Review in the Nature of a Complaint for Declaratory Judgment and Injunctive Relief and alleges the following:

**STATUTORY AUTHORITY**

1. Petitioner brings this Petition for Review in the Nature of a Complaint for Declaratory Judgment and Injunctive Relief pursuant to the “Declaratory Judgments Act”, 42 Pa.C.S. § 7531 et. seq.; Pennsylvania Rules of Civil Procedure, Rule 1602 et. seq. and 3 Pa.C.S. § 315.

**JURISDICTION**

2. The Court has jurisdiction of this Petition for Review in the Nature of a Complaint for Declaratory Judgment and Injunctive Relief pursuant to 42 Pa.C.S. § 761, which provides jurisdiction over all civil actions or proceedings by the Commonwealth government, and 3 Pa.C.S. § 315, which provides jurisdiction over actions by the

Attorney General to invalidate and/or enjoin the enforcement of an unauthorized local ordinance.

### **PARTIES**

3. Petitioner is the Pennsylvania Office of Attorney General, an agency of the Commonwealth of Pennsylvania, whose principal business address is Strawberry Square, Harrisburg, PA 17120. Pursuant to 3 Pa.C.S. §§ 314 and 315, the Attorney General is authorized to review local ordinances and to bring actions against local government units to invalidate and/or enjoin the enforcement of unauthorized local ordinances.

4. Respondent Lower Oxford Board of Supervisors is the duly elected governing body of Lower Oxford Township, a municipal corporation and township of the second class, with offices at 220 Township Road, Oxford, Pennsylvania, 19363.

### **FACTS**

5. Respondent Lower Oxford Township is a political subdivision of the Commonwealth of Pennsylvania within which an Agricultural Security Area has been created pursuant to 3 P.S. § 911.

6. On or about March 25, 2004, Lower Oxford Township adopted Ordinance Number 2004-1 (“Ordinance”). A copy of the Ordinance is attached as Exhibit A.

7. Section 200 of the Ordinance defines a Commercial Composting Processing Operation as: Any mixing, combining, processing, aerating, packaging, shipping, or similar use of any composting materials or storing processed compost for the purpose of sale or distribution. The term commercial composting operations shall include all manure storage operations and land application of any composting materials,

but shall not include the manure resulting from any on-site agricultural operation, nor manure product being spread on fields as fertilizer for agriculture. The term shall include spent mushroom substrate, as well as material being processed to be used as “fresh” mushroom compost. Section 200 further provides specific definitions of Fresh Mushroom Compost and Spent Mushroom Growing Substrate.

8. Part 13 of the Ordinance permits a commercial compost processing operation as a conditional use in the Limited Industrial District.

9. Section 1421(A)(3) of the Ordinance requires an applicant seeking to establish a commercial composting processing operation to submit a water feasibility study to enable the municipality to evaluate the impact of the proposed development on the groundwater supply and on existing wells. The water feasibility study shall include the calculations of projected water needs and a determination of effects of the proposed water supply system on the quantity and quality of water in nearby wells, streams and the groundwater table.

10. Section 1421(A)(7) of the Ordinance states that no processing or storage of compost shall be permitted within 200 feet of any lot line or 500 feet of any residential district.

11. Section 1421(A)(8) of the Ordinance requires an applicant seeking to establish a commercial composting processing operation to submit a plan demonstrating safe access to the site, control of odors, and control of blowing litter.

12. Section 1421(A)(9) of the Ordinance states that all composting activities must be conducted within a completely enclosed building. The section further provides that the structure must be vector-proof and utilize state of the art technology for aerobic,

thermophilic decomposition of the materials involved in the compost operation and must utilize the best available air scrubbing technology to control odor and air pollution.

13. Section 1421(A)(20) of the Ordinance states that no processing shall be permitted within 500 feet of any wells, springs, lakes and/or streams.

14. Section 1421(C)(3) of the Ordinance states any proposed operation shall not create a nuisance in the Township or otherwise impose a hardship on adjoining property owners or with the Township in general.

15. Section 1421(C)(5) requires that the site be properly fenced to prevent blowing papers and other nuisances on adjoining properties.

16. Section 1421(C)(6) requires operations to be properly maintained such that it does not constitute a nuisance or danger to the adjoining property owners and to the surrounding areas from uneven settlement, emission of gases due to waste decomposition, and potential vandalism from being abandoned.

17. On or about November 2, 2005, the operator of a normal agricultural operation requested that the Attorney General review the Ordinance pursuant to 3 Pa. C.S. § 314. A copy of the request is attached as Exhibit B.

## **COUNT I**

### **VIOLATION OF 3 Pa.C.S. § 313**

18. Petitioner incorporates paragraphs 1 through 17 as if fully set forth.

19. 3 Pa. C.S. § 312 defines an unlawful local ordinance as an ordinance enacted or enforced by a local government unit which prohibits or limits a normal agricultural operation unless the local government: (1) has expressed or implied authority

under State law to adopt the ordinance; and (2) is not prohibited or preempted under State law from adopting the ordinance.

20. 3 Pa C.S. § 313 prohibits a local government unit from adopting or enforcing an unauthorized local ordinance.

21. 3 P.S. § 952 defines a normal agricultural operation as the activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock, and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities and is: (1) not less than ten contiguous acres in area: or (2) less than ten contiguous acres in area but has anticipated yearly gross income of at least \$10,000. The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. Use of equipment shall include machinery designed and used for agricultural operations, including but not limited to, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment, bins and related equipment used to store or prepare crops for marketing and those items of agricultural equipment and machinery defined by the act of December 12, 1994 (P.L. 944, No. 134) known as the Farm Safety and Occupational Health Act. Custom work shall be considered a normal farming practice.

22. Mushroom compost preparation is a normal agricultural operation as defined in 3 P.S. § 952.

23. Lower Oxford Township has no express or implied authority to regulate mushroom compost preparation.

24. A fresh mushroom substrate facility is a manure management facility as defined by the Nutrient Management Act, 3 Pa C.S. § 503.

25. Fresh mushroom substrate is a nutrient as defined by the Nutrient Management Act, 3 Pa C.S. § 503.

26. The restrictions imposed by Section 1421(A)(3),(7),(8),(9) and (20) of the Ordinance are preempted by State law.

27. The restrictions imposed by the Ordinance are prohibited by the agricultural protections set forth in the Right to Farm Law, 3 P.S. 952, the Municipalities Planning Code, 53 P.S. § 10603, and the Agricultural Area Security Law, 3 P.S. § 912.

28. The Ordinance prohibits or limits a normal agricultural operation in violation of 3 Pa C.S. § 313.

## **COUNT II**

### **VIOLATION OF THE NUTRIENT MANGEMENT ACT.**

#### **3 Pa C.S. § 501**

29. Petitioner incorporates paragraphs 1 through 28 as if fully set forth.

30. The Nutrient Management Act (NMA) occupies the whole field of regulation regarding nutrient management and odor management to the exclusion of all local regulation.

31. The NMA provides that no ordinance or regulation of any political subdivision may prohibit or in any way regulate practices related to the storage, handling, land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients or practices

otherwise regulated by this chapter if the municipal ordinance or regulation is in conflict with this chapter and the regulations or guidelines promulgated under it.

32. The 500 foot setback requirements for commercial compost processing operation under Section 1421(A)(7) and (20) of the Ordinance are preempted by the NMA and are arbitrary, unreasonable and not substantially related to the health, safety, morality and general welfare of the community.

33. The setback provisions of Section 1421(A)(7) and (20) of the Ordinance conflict with and are more stringent than the various 100, 200, and 300 foot setback requirements of the NMA regulations, 25 Pa. Code § 83.351.

34. The requirement for the submission of a written odor plan in Section 1421(A)(8) is preempted by the NMA.

35. Section 1421(A)(9) of the Ordinance attempts to regulate nutrient management and odor management in violation of the NMA.

### **COUNT III**

### **VIOLATION OF THE WATER RESOURCES PLANNING ACT,**

### **27 Pa C.S. § 3131**

36. Petitioner incorporates paragraphs 1 through 35 as if fully set forth.

37. Section 3136 of the Water Resources Planning Act prohibits political subdivisions from regulating the allocation of water resources and the conditions of water withdrawal.

38. The restrictions on allocation of water resources in Section 1421(A)(3) of the Ordinance is preempted under Section 3136 of the Water Resources Planning Act.

**COUNT IV**

**VIOLATION OF THE MUNICIPALITIES PLANNING CODE,**

**53 P.S. § 10603(h)**

39. Petitioner incorporates paragraphs 1 through 38 as if fully set forth.

40. The Municipalities Planning Code (MPC) provides that zoning ordinances shall encourage the continuity, development and viability of agricultural operations. Further, the MPC states that zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present unless the agricultural operation will have a direct effect on the public health and safety.

41. Sections 1421(A)(3),(7),(8),(9) and (20) and Sections 1421(C)(3)(5) and (6) of the Ordinance restrict agricultural operations in violation of the MPC.

**COUNT V**

**VIOLATION OF THE AGRICULTURAL AREA SECURITY LAW,**

**3 P.S. § 911**

42. Petitioner incorporates paragraphs 1 through 41 as if fully set forth.

43. The Agricultural Area Security Law (AASL) provides that every municipality or political subdivision within which an agricultural security area is created shall encourage the continuity, development and viability of agriculture within such an area by not enacting local laws or ordinances which would unreasonably restrict farm structures or farm practices within the area in contravention of the purposes of this act unless such restrictions or regulations bear a direct relationship to the public health or safety.



44. Sections 1421(A)(3),(7),(8),(9) and (20) and Sections 1421(C)(3),(5) and (6) of the Ordinance unreasonably restrict farm structures and farm practices in violation of the AASL.

**COUNT VI**

**VIOLATION OF THE RIGHT TO FARM LAW,**

**3 P.S. § 953**

45. Petitioner incorporates paragraphs 1 through 44 as if fully set forth.

46. The Right to Farm Law provides that every municipality shall encourage the continuity, development and viability of agricultural operations within its jurisdiction. Every municipality that defines or prohibits a public nuisance shall exclude from the definition of such nuisance any agricultural operation conducted in accordance with normal agricultural operations so long as the agricultural operation does not have a direct adverse effect on the public health and safety.

47. Section 1421(C)(3),(5) and (6) of the Ordinance violate the Right to Farm Law by including a normal agricultural operation as a nuisance.

**WHEREFORE**, Petitioner prays that the Court grant the following relief:

- (a) declare Lower Oxford Township Ordinance Number 2004-1 null and void;
- (b) enjoin Lower Oxford Township from enforcing Ordinance Number 2004-1; and
- (c) grant such other relief as it may deem just and proper under the circumstances.

Respectfully submitted,

**THOMAS W. CORBETT, JR.**  
Attorney General

BY:

\_\_\_\_\_  
Michael T. Killion  
Deputy Attorney General  
Attorney ID # 201923

Gregory R. Neuhauser  
Senior Deputy Attorney General  
Attorney ID # 31485

Susan J. Forney  
Chief Deputy Attorney General  
Attorney ID # 27744

Office of Attorney General  
Litigation Section  
15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) 705-2331

Date: June 29, 2006

**VERIFICATION**

I, LOUIS J. ROVELLI, verify that the statements contained in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_

\_\_\_\_\_  
LOUIS J. ROVELLI

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OFFICE OF ATTORNEY GENERAL  
BY THOMAS W. CORBETT, JR., ATTORNEY GENERAL  
Petitioner**

**NO. M.D. 2006**

**v.**

**LOWER OXFORD TOWNSHIP,  
LOWER OXFORD TOWNSHIP BOARD  
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**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

Legal Referral Service  
Chester County Bar Association  
15 W. Gay Street  
West Chester, PA 19380

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**CERTIFICATE OF SERVICE**

I, Michael T. Killion, Esquire, hereby certify that service of a true and correct copy of the enclosed Petition for Review in the Nature of a Complaint for Declaratory Judgment and Injunctive Relief was delivered in person to:

Lower Oxford Board of Supervisors  
220 Township Road  
Oxford, PA 19363

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**MICHAEL T. KILLION  
DEPUTY ATTORNEY GENERAL**

Date: \_\_\_\_\_